

LAND SALE CONTRACT

THIS CONTRACT, made and entered into this 29th day of SEPTEMBER, 1989, by and between CECIL D. DAVIES and DOROTHY J. DAVIES, husband and wife, hereinafter called Seller, and ELMER C. OGBORN and JOANNE M. OGBORN, husband and wife, hereinafter called Buyer (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

W I T N E S S E T H:

Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller for the price and on the terms and conditions set forth hereafter all of the following described property and improvements legally described on Exhibit "A", attached hereto and incorporated by reference herein as if fully set forth, subject to the encumbrances also set forth on Exhibit "A".

SUBJECT TO: contracts and/or liens for irrigation and/or drainage, the schedule of exclusions from coverage, together with any schedules contained in standard title policies, reservations, easements, restrictions and rights of way of record and those apparent on the land.

ALSO SUBJECT TO: rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

It is mutually agreed as follows:

1. **Possession:** Buyer shall be entitled to possession of the property as of the date hereof;

2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment. However, no payment by Buyer shall exceed twenty nine (29) percent of the total purchase price provided for hereinafter during any one calendar year. The foregoing prohibition also requires that this contract shall not be paid in full by Buyer prior to October 31, 1994.

3. **Payment of Liens and Taxes:** Buyer shall pay promptly all indebtedness incurred by their acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date, provided, all such taxes, assessments and charges for the current year shall be pro-rated as of the date hereof, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller and such amount shall bear interest at the same rate as provided herein, without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered a proper receipt therefore;

4. **Insurance:** Buyer shall keep any buildings on said property insured against loss or damage by fire or other casualty in an amount not less than the full insurable value thereof with

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loss payable in the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession; Buyer shall furnish Seller proof of such insurance coverage;

5. **Waste Prohibited:** Buyer agrees that all improvements now located or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair, provided, Buyer shall not make or cause to be made any major improvements or alterations to the property without first obtaining the written consent of Seller;

6. **Transfer of Title:** Seller shall upon the execution hereof make and execute in favor of Buyer a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as provided herein, together with a good and sufficient Bill of Sale or Certificate of Title as appropriate and will place said documents, together with one of these agreements, in ^{Seller's possession} ~~escrow with the title company of Klamath County, 222 South Sixth Street, Klamath Falls, Oregon, and shall enter into written escrow instructions in form satisfactory to said escrow holder~~ and the parties hereto, instruct said ~~escrow~~ Sellers ^{holder} that when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said ~~escrow holder~~ ^{Sellers} shall deliver said documents to Buyer, but in case of default by Buyer said ~~escrow holder~~ ^{Sellers} shall retain the documents ~~on demand of said documents to Seller~~. *J. E. O. C.D. 8/80*

7. **Tax Payment Procedures:** Until a change is requested, all tax statements shall be sent to the address designated by Buyer hereinafter. Buyer shall be required to pay the same and provide proof of such payment to Seller within thirty (30) days of the date of mailing of the said tax statement by the County Tax Collector.

8. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of his own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability, and has personally researched and is satisfied with the ability to obtain access to the property; that no attempt has been made to influence his judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement;

9. **Time of Essence:** It is understood that and agreed between the parties that time is of the essence of this contract;

10. **Default:** In case Buyer shall fail to make the payments aforesaid, or any of them punctually and upon the strict terms and at the times above-specified or fail to keep any of the terms or conditions of this agreement, then the Seller at his option shall have the following rights;

a) To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

b) To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

c) To withdraw said deed and other documents from the escrow and/or;

d) To foreclose this contract by suit or by strict foreclosure in equity.

However, in no event shall Seller be authorized to exercise any of the foregoing options, unless and until Buyer shall have failed to make any scheduled payment within ninety (90) days of the date that such payment shall fall due.

In any of such cases, all rights and interest created or then existing in favor of the Buyer as against the Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above-described and all other rights acquired by the Buyer hereunder shall revert to and revest in said Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of Buyer of return, reclamation or compensation for monies paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default, all payments theretofore made on this contract are to be retained by and belong to said Seller as the agreed and reasonable rent of said premises up to the time of such default. The said Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right and nothing in this contract shall preclude appointment of the Seller as such receiver;

11. **Abandonment:** Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and his security interest herein, and in the event possession is so taken by Seller he shall not be deemed to have waived his right to exercise any of the foregoing rights;

12. **Attorney Fees:** In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law;

13. **No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision hereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by Seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself;

14. **Binding on Successors:** This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing;

15. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of Fifty two thousand seven hundred dollars (\$52,700.00) payable as follows:

(a) Buyer shall pay an initial payment in the sum of One thousand seven hundred dollars (\$1,700.00) and

(b) The remainder of the purchase price in the amount of FIFTY-ONE THOUSAND AND NO/100 (\$ 51,000.00) shall be

payable in monthly installments of Four hundred seventy six and nine/100ths dollars (\$476.09) per month, including interest at the rate of ten and three fourths percent (10 3/4%) per annum on the unpaid balance, which said sum includes principal and interest; the first of such payments shall be payable on the 15th day of November, 1989, with a further and like installment payable on the 15th day of each and every month thereafter, until the full amount of principal and interest shall have been paid in full.

16. **Escrow Funds Distribution:** It is understood by and between the parties that the real property being conveyed by the within instrument is encumbered by a certain contract, including the terms and provisions thereof, more particularly described herein, owing to GARY LEROY ZUMWALT. It is agreed that the escrow holder named herein, or its successor, upon receipt of payments from Buyer, shall remit the same in payment of the obligation owing to GARY LEROY ZUMWALT until the said obligation has been paid in full. Seller agrees that the proceeds from payments made hereunder by Buyer shall be utilized by Seller (and the named escrow agent) in payment of the aforesaid obligation, which Buyer does not assume.

17. **Late Payment Penalty:** In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of TWENTY THREE AND EIGHTY/100THS DOLLARS (\$23.80), in addition to the regularly-scheduled payments set forth in paragraph 15 hereinabove as and for a late payment penalty, should Buyer fail to make any payment required to be made hereunder within fifteen (15) days of the day due. Seller shall be required to notify both Buyer and the escrow agent named herein (or its successor) of the accrual of such late payment charge, which such charge shall be credited only as an additional charge to Buyer and not as a credit to either interest or principal;

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first hereinabove written.

SELLER:

X Cecil D. Davies
CECIL D. DAVIES

X Dorothy J. Davies
DOROTHY J. DAVIES

BUYER:

X Elmer C. Ogborn
ELMER C. OGBORN

X Joanne M. Ogborn
JOANNE M. OGBORN

STATE OF OREGON/County of Klamath)ss:

PERSONALLY APPEARED BEFORE ME the above-named CECIL D. DAVIES and DOROTHY J. DAVIES, husband and wife, and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 29th day of Sept, 1989.

John F. Obedowski
JOHN F. OBEDOWSKI
NOTARY PUBLIC-OREGON
My Commission Expires 1-6-91

John F. Obedowski
NOTARY PUBLIC FOR OREGON
My Commission Expires: 1-6-91

STATE OF OREGON/County of Klamath)ss.

PERSONALLY APPEARED BEFORE ME the above-named ELMER C. OGBORN and JOANNE M. OGBORN and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 29th day of September, 1989.

Kristi L. Redd
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/16/91

GRANTOR'S NAME AND ADDRESS

Cecil D. & Dorothy J. Davies
P.O. Box 5833
Vancouver, WA 98661-9993

GRANTEE'S NAME AND ADDRESS

Elmer C. & JoAnne M. Ogborn
2131 Lakeshore
Klamath Falls, OR 97601

AFTER RECORDING, RETURN TO:

Cecil D. & Dorothy J. Davies
P.O. Box 5833
Vancouver, WA 98661-9993

**UNTIL A CHANGE IS REQUESTED
TAX STATEMENTS SHOULD BE
SENT TO:**

Elmer C. & JoAnne M. Ogborn
2131 Lakeshore
Klamath Falls, OR 97601

STATE OF OREGON/County of Klamath)ss:

I CERTIFY that the within instrument was received for record on the _____ day of _____, 19____ at _____ o'clock _____ M. and recorded in Book _____ on Page _____ or as File/Reel number _____, Records of Deeds of said County.

WITNESS MY HAND AND SEAL OF COUNTY AFFIXED.

Recording Officer
By: _____

EXHIBIT A - (Legal Description)

Lot 4, Block 31, FIRST ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Tax Account No. 3809 029CD 12800

Key No: ~~36887~~ 368881

SUBJECT TO City Lien in favor of the City of Klamath Falls, Improvement Unit No. 292, Card No. 10, docketed March of 1981, original amount, \$3,012.77; unpaid balance, \$635.00 plus interest, if any, which said lien Buyer agrees to assume and to pay.

ALSO SUBJECT TO Trust Deed, including the terms and provisions thereof, in the amount of \$48,900.00, with Theodore J. Paddock as grantor, D. L. Hoots as trustee, and Security Savings and Loan Association as beneficiary, given to secure an indebtedness with interest thereon and such future advances as may be provided therein; dated May 2, 1978, recorded May 3, 1978, in Vol. M78 at page 8895, Microfilm Records of Klamath County, Oregon. The beneficial interest under said Trust Deed was assigned by instrument, dated May 22, 1981, recorded May 29, 1981, in Vol. M88 at page 9603, Microfilm Records of Klamath County, Oregon, to American Savings and Loan, which said Trust Deed Buyer does not assume, but which is to be paid by Seller from out of the proceeds in payment of the within Land Sale Contract.

ALSO SUBJECT TO Real Estate Contract, including the terms and provisions thereof, dated March 21, 1980, and recorded March 21, 1980, Vol. M80 at page 5422, Microfilm Records of Klamath County, Oregon, in which Gary Leroy Zumwalt is the vendor and Jon G. Pierce and Rose M. Pierce, husband and wife, are the vendees. The vendees' interest in said Real Estate Contract was assigned by assignment, dated August 20, 1981, and recorded August 20, 1981, in Vol. M81 at page 15056, Microfilm Records of Klamath County, Oregon, from Jon G. Pierce and Rose M. Pierce, husband and wife, to Cecil D. Davies and Dorothy J. Davies, husband and wife, which said Real Estate Contract, Buyer does not assume, but which Seller agrees to pay from out of the proceeds in payment of the within Land Sale Contract.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 4th day of Oct. A.D., 19 89 at 3:37 o'clock P.M., and duly recorded in Vol. M89 of Deeds on Page 18758.

FEE \$33.00

Evelyn Biehn - County Clerk

By *Carolyn Mullender*